

## REMARKS

In response to the Office action dated January 11, 2007 Applicants respectfully request reconsideration based on the above amendments and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 1-17 are pending in the present application. Claims 3 and 15-17 have been amended, claims 1 and 2 have been cancelled and claims 18 and 19 have been added, leaving claims 3-19 for consideration upon entry of the above amendments and the following remarks.

Support for the claim amendments are at least found in the specification, the figures and the claims as originally filed. More particularly, support for amended claim 3 is at least found in originally filed Specification at Page 1, lines 5-6. Support for new claim 18 may be found at least at Fig. 3 and related description, particularly at page 10, lines 7 to 8 of the application as originally filed. Support for new claim 19 may be found at least at in original claim 4.

No new matter has been introduced by the above amendments or the following remarks. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

### **Claim Rejections Under 35 U.S.C. § 101**

Claim 3 stands rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. The Examiner states that claim 3 describes a system including a contacting terminal applied to an auricle of vagus nerves of the ear and therefore includes non-statutory subject matter positively recited in the claim.

Applicants have amended claim 3 to read “a contacting terminal connected to the connecting line and *adapted to contact* an auricle of vagus nerves of the ear,” as suggested by the Examiner.

Accordingly, it is respectfully requested that the rejection to claim 3 under § 101 be withdrawn and allow the same to issue.

### **Claim Rejections Under 35 U.S.C. § 102**

In order to anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Bariant, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d

1766, 1768 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Swing (U.S. Patent No. 6,522,929, hereinafter “Swing”). The Examiner states that Swing discloses all of the elements of the abovementioned claims, primarily in FIG. 1 and column 3, lines 53-57 and column 4, lines 21-23.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Colsen et al. (U.S. Patent No. 4,966,164, hereinafter “Colsen”). The Examiner states that Colsen discloses all of the elements of claim 1, primarily in column 5, lines 41-45 and column 7, lines 19-51.

Applicants have cancelled claims 1 and 2, rendering rejections thereto moot.

#### **Allowable Subject Matter**

Claims 4-17 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claims and any intervening claims. Applicants gratefully acknowledge the Examiner’s noting the allowable subject matter in claims 4-17, but Applicants respectfully submit that independent claim 3, from which claims 4-17 variously depend, is allowable, as discussed above. As such, Applicants submit that claims 4-17 are correspondingly allowable and have not rewritten claims 4-17 in independent form at this time.

#### **New Claims**

New claims 18 and 19 have been newly added to further define Applicants’ invention as supported at least in Figure 3 and pages 9 -10 of the specification as originally filed. The Amendments here presented are made for the purposes of better defining the invention, rather than to overcome the rejections for patentability. No presumption should therefore attach that

the claims have been narrowed over those earlier presented, or that subject matter or equivalents thereof to which the Applicants are entitled has been surrendered. No new matter has been added.

**Conclusion**

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

Applicants hereby petition for any necessary extension of time required under 37 C.F.R. 1.136(a) or 1.136(b) which may be required for entry and consideration of the present Reply.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicants' attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

Respectfully submitted,

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